

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

FEDERAL TRADE COMMISSION,)
)
) Plaintiff,)
 -vs-) 4:14-CV00815-BCW
)
 BF LABS, INC,. et al.,)
)
) Defendants.)

THE DEPOSITION OF JOSH ZERLAN, produced,
sworn and examined on the part of the Plaintiff,
pursuant to Notice on Thursday, September 25, 2014, at
the law offices of United States Attorney General's
Office, Charles Evan Whittaker Courthouse, 400 E. 9th
Street, Suite 5510, in the City of Kansas City, County
of Jackson and State of Missouri, before me,

BRENDA FITZGERALD, CCR No. 520
of
JOHN M. BOWEN & ASSOCIATES

a Certified Court Reporter, in a certain cause now
pending IN THE UNITED STATES DISTRICT COURT, FOR THE
WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION,
wherein FEDERAL TRADE COMMISSION is Plaintiff and BF
LABS, INC,. et al., are Defendants.

A P P E A R A N C E S:

For Plaintiff:

FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, N.W.
Mailstop CC-10232
Washington, DC 20580
By: Ms. Malini Mithal

UNITED STATES ATTORNEY'S OFFICE
Charles Evan Whittaker Courthouse
400 E. 9th Street
Kansas City, Missouri 64106
By: Mr. Charles Thomas

A P P E A R A N C E S (Cont'd)

For Defendants:

KENNYHERTZ PERRY
420 Nichols Road
Suite 207
Kansas City, Missouri 64112
By: Mr. Braden M. Perry
braden@kennyhertzperry.com

For Receiver:

SPENCER FANE BRITT & BROWNE
1000 Walnut
Suite 1400
Kansas City, Missouri 64106
By: Mr. Carlos H. Marin
cmarin@spencerfane.com

Also Present:

Mr. Eric L. Johnson, Receiver

I N D E X

Direct Examination by Ms. Mithal

Cross-Examination by Mr. Johnson

E X H I B I T I N D E X

Deposition Exhibit No.

No. 1 - Not identified

No. 2 - Attachment AAJ

No. 3 - Not identified

(Exhibit attached.)

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ROUGH DRAFT

1 (WHEREUPON, DEPOSITION EXHIBIT NOS. 1
2 THROUGH 3 WERE MARKED FOR IDENTIFICATION.)

3 MS. MITHAL: This is the deposition of
4 Josh Zerlan in the matter of FTC versus Butterfly
5 Labs, Inc., Case No. 4-CV-815 WBCW, pending in the
6 Western District of Missouri.

7 My name is Malini Mithal and I'm
8 appearing on behalf of the plaintiff, Federal
9 Trade Commission. Also with me is Peter Lamberton
10 appearing on behalf of the plaintiff, the Federal
11 Trade Commission.

12 I'll let the others present identify
13 themselves.

14 THE WITNESS: My name is Josh Zerlan
15 with Butterfly Labs.

16 MR. PERRY: Braden Perry on behalf of
17 the defendant.

18 MR. MARIN: Carlos Marin on behalf of
19 the receiver.

20 JOSH ZERLAN,
21 a witness, having been first duly sworn, testified
22 upon his oath as follows:

23 DIRECT EXAMINATION

24 BY MS. MITHAL:

25 Q Okay, Mr. Zerlan, are you represented by an

ROUGH DRAFT

1 attorney?

2 A Yes, I am.

3 Q And who is that?

4 A Braden Perry.

5 Q And Mr. Perry is in the room with you today;
6 correct?

7 A Yes, he is.

8 Q Okay, and have you ever been deposed before?

9 A Yes.

10 Q How many times?

11 A Once.

12 Q And in what case was that?

13 A It was in a case involving web hosting.

14 Q And when was that?

15 A Many years ago. I don't recall the exact year.

16 Q Okay, and what was the subject matter of that
17 case?

18 A They were -- it was the MCA takedown notice.

19 Q Okay, so I understand that you've been deposed
20 before but I just want to lay out some ground
21 rules anyway given that it was a number of years
22 ago, and I want to make sure that we are on the
23 same page as we proceed through this deposition.

24 So I will be asking you a series of
25 questions. It is very important that we do not

ROUGH DRAFT

1 speak over each other so that the reporter can
2 accurately transcribe the questions and answers
3 and please make sure that you verbalize all
4 answers. Try not to nod or gesture.

5 Do you understand?

6 A Yes, I do.

7 Q And if you do not hear a question, please say so
8 and I will repeat it.

9 Do you understand that?

10 A Yes.

11 Q Great. And if you do not understand a question,
12 please say so and I will repeat it.

13 Do you understand that?

14 A Yes, I do.

15 Q If you answer a question I will assume that you
16 have heard it, understood it and have given me
17 your best recollection.

18 Do you understand that?

19 A Yes.

20 Q Is there any reason why you cannot testify
21 truthfully and accurately as to all of my
22 questions today?

23 A No, there is not.

24 Q And do you understand that your testimony today is
25 under oath?

ROUGH DRAFT

1 A Yes, I do.

2 Q And do you understand that false testimony during
3 this deposition may subject you to perjury
4 charges?

5 A Yes, I do.

6 Q Okay, and do you understand that you are to
7 testify today as if you were in a courtroom before
8 a judge even though we are conducting the
9 deposition via telephone?

10 A Yes, I do.

11 Q Okay, and so that later during a break if the
12 other room frees up we might switch to video
13 conference so I'm just letting you know that as
14 well, Mr. Zerlan.

15 A That's fine.

16 Q Okay, are you sick today?

17 A I'm sorry?

18 Q Are you sick today?

19 A Am I sick?

20 Q Yes. Are you sick?

21 A No, I'm not sick today.

22 Q Okay, are you taking any medication that would
23 interfere with your ability to testify truthfully
24 and accurately?

25 A No, I'm not.

ROUGH DRAFT

1 Q So please state and spell your full name.

2 A Joshua, J-O-S-H-U-A, Ryan, R-Y-A-N, Zerlan,
3 Z-E-R-L-A-N.

4 Q Have you used or do you use any other names or
5 aliases?

6 A Just Josh.

7 Q What is your date of birth?

8 A

9 Q And where were you born?

10 A

11 Q And what is your Social Security number?

12 A

13 Q Do you have any additional Social Security
14 numbers?

15 A

16 Q Do you have a driver's license?

17 A I do.

18 Q From which state?

19 A

20 Q And do you have your driver's license with you
21 here today?

22 A I do.

23 Q Please read into the record your driver's license
24 number?

25 A The number is

ROUGH DRAFT

1 **Q Do you hold any other driver's licenses?**

2 A I do not.

3 **Q Do you hold a U.S. passport?**

4 A I do.

5 **Q Do you hold any other passports?**

6 A I do not.

7 **Q Have you traveled outside of the United States in**
8 **the past five years?**

9 A Yes, I have.

10 **Q Where was that?**

11 A Many countries.

12 **Q Okay. Can you tell me the countries in the last**
13 **two or three years, let's do three years?**

14 A India, DPRK, the UK, Germany, Slovenia, Argentina,
15 Mexico. There are more. They are alluding me at
16 the moment though.

17 **Q Are there any additional ones in the last year?**

18 A Yeah -- not off the top of my head.

19 **Q Okay, and what was the purpose of those trips?**

20 A Primarily was business for Butterfly Labs.

21 **Q And what type of business?**

22 A Speaking at conferences.

23 **Q What is your present residence address?**

24 A

25 **Q How long have you been living at that address?**

ROUGH DRAFT

1 A

2 Q And where did you live before then?

3 A

4 Q Do you have any plans to move in the next year or
5 so?

6 A I do not.

7 Q And how long did you live at your prior address?

8 A

9 Q Okay. Do you use any E-mail addresses?

10 A I do.

11 Q What E-mail addresses do you use?

12 A Josh@butterflylabs.com, @cowmail.org,

13 @gmail.com and those are the primary ones

14 I use. I don't recall if I have others, which I
15 do have, but I don't know what they are.

16 Q Have you used any of the other ones in the last
17 six months?

18 A Not to my knowledge.

19 Q In the last year?

20 A Not to my knowledge.

21 Q And I know you mentioned a cowmail address.

22 Do you just have one cowmail address,
23 Mr. Zerlan?

24 A It actually is a catch-all address on any E-mail
25 addressed to the cowmail domain goes to my Josh at

ROUGH DRAFT

1 cowmail dot organize.

2 Q Okay. What is your cell phone number?

3 A

4 Q And do you have any other cell or telephone
5 numbers?

6 A

7

8 Q Okay. And are you married?

9 A

10 Q Okay, what is the name of your spouse?

11 A

12 Q And how long have you been married?

13 A

14 Q And what is your spouse's birthday?

15 A

16 Q And have you been married before then?

17 A

18 Q And what was that -- what was your former spouse
19 name?

20 A

21 Q And what is her date of birth?

22 A

23 Q Do you have any children?

24 A

25 Q Okay, are you employed at Butterfly Labs, Inc.?

ROUGH DRAFT

1 A I am.

2 Q And what is your title?

3 A VP of product development.

4 Q How long have you had that title?

5 A Approximately two years.

6 Q And did you have any position with the company
7 before that or during that time as well?

8 A I did not.

9 Q And can you describe your duties and
10 responsibilities?

11 A The design and planning of future products, the
12 modification or possible changes to current
13 products, some customer and community liaison,
14 speaking at conferences either on behalf of
15 Butterfly Labs or on bit coin, unrelated to
16 Butterfly Labs, and speaking at our booth to
17 potential customers or people who have questions.

18 Q Okay, and can you describe your compensation?

19 A Can you elaborate on that question?

20 Q Yes. How much income have you received from the
21 company over the last five years?

22 A Over the last five years, I don't know what the
23 aggregate amount would be. I receive, I think,
24 around \$53,000 a year before taxes.

25 Q Okay, and do you receive any other benefits from

ROUGH DRAFT

1 the company?

2 A I'm supposed to receive hardware for -- in
3 addition to my compensation.

4 Q And what kind of hardware?

5 A Mining hardware.

6 MR. PERRY: You know, I'm sorry to
7 interrupt. It's about time that Charles and I go
8 talk to the judge for a couple of minutes and I
9 apologize. I was hoping to get through kind of
10 background and that information.

11 Can we take a break and we'll give you a
12 call back when that conference with the judge is
13 over, please?

14 MS. MITHAL: That sounds great.

15 MR. THOMAS: Should we -- we should call
16 the 326-2972 number when we're done?

17 MS. MITHAL: That sounds great.

18 (NOON RECESS.)

19 MS. MITHAL: So this is Malini Mithal
20 with the Federal Trade Commission.

21 MR. LAMBERTON: Peter Lamberton with the
22 the FTC.

23 MS. MITHAL: Can everybody who is in the
24 room over there identify themselves, please,
25 starting with Mr. Zerlan.

ROUGH DRAFT

1 THE WITNESS: This is Josh Zerlan of
2 Butterfly Labs.

3 MR. PERRY: Braden Perry for Butterfly
4 Labs, Sonny Vlesiedes and Jody Drake.

5 MR. LAMER: Bryant Lamer, counsel for
6 the receiver, Eric Johnson.

7 MR. THOMAS: Charles Thomas with the
8 U.S. attorney's office.

9 MS. MITHAL: So, Mr. Zerlan, I just want
10 to say do we need to do the oath again, maybe the
11 court reporter should do that?

12 MR. PERRY: I assume that he's still
13 under oath.

14 Q (By Ms. Mithal) Okay, great. So, Mr. Zerlan, the
15 same thing, same ground rules we talked about this
16 morning obviously still apply. I don't know if
17 you have any questions or do you understand that?

18 A I do understand.

19 Q Okay. So then let's just resume. One more
20 background question I wanted to ask you or maybe a
21 couple of more.

22 Did you tell me what your highest degree
23 of education is?

24 A Associate's degree.

25 Q Okay, and from where?

ROUGH DRAFT

1 A Johnson County Community College.

2 Q And do you have a particular technical expertise?

3 A I do, computer information systems and computer
4 science.

5 Q Okay, so before the break we were talking about
6 your compensation and you said that you were
7 supposed to receive hardware from the company.

8 So what type of hardware were you
9 supposed to receive from the company?

10 A Mining hardware.

11 Q And were there specific mining products that you
12 were supposed to receive?

13 A No.

14 Q So could you just describe what the compensation
15 structure was related to mining hardware?

16 A \$30,000 worth of mining hardware.

17 Q Per year?

18 A Per year, yes.

19 Q And did you receive any of that?

20 A I received one set of that.

21 Q And what was the hardware you received?

22 A Mining hardware.

23 Q And was there a particular name of the hardware?

24 A The Butterfly Lab Single.

25 Q And was this able to mine for bit coin?

ROUGH DRAFT

1 A Yes, it was.

2 Q And did you use it to generate bit coins?

3 A I did.

4 Q And when did you receive it?

5 A I don't specifically recall.

6 Q And you had said that you worked for the company
7 for two years; is that correct?

8 A Yes.

9 Q And so were you supposed to receive another piece
10 of mining hardware?

11 A Yes.

12 Q And when has happened with that?

13 A We have not had hardware to ship so I have not
14 received any hardware.

15 Q And since when have you not had hardware to ship?

16 A Can you clarify which hardware you're referring
17 to?

18 Q The hardware that you were referring to when you
19 said we have not had hardware to ship.

20 A The Monarch.

21 Q Okay, the Monarch. And so you were supposed to
22 receive a Monarch when?

23 A There was no specific date.

24 Q And you have not yet received it?

25 A Correct.

ROUGH DRAFT

1 Q And that's because there are no Monarch to ship?

2 A That is not correct.

3 Q Okay, could you explain why you haven't receive a
4 Monarch?

5 A Because we have customers waiting for Monday a.

6 Q And do you know how many customers are waiting for
7 Monarch?

8 A I do not.

9 Q And do you expect to receive the Monarch?

10 A I have no expectations.

11 Q And have you been promised any sort of timeframe
12 for when you would receive the Monarch?

13 A No.

14 Q And have you -- let's talk more about your other
15 forms of compensation, so we talked about salary,
16 we talked about the Monarch.

17 Does the company give you any other
18 benefits such as loans or loan payments?

19 A No.

20 Q Does the company pay for your car?

21 A No.

22 Q Your house?

23 A No.

24 Q Do you have any ownership interest in the company?

25 A I do not.

ROUGH DRAFT

1 Q And are you receiving compensation for your time
2 at today's deposition?

3 A Not to my knowledge.

4 Q And you're being represented today; is that
5 correct?

6 A Yes, I am.

7 Q By whom?

8 A Braden Perry.

9 Q And who is paying for Mr. Perry?

10 A I do not know.

11 Q And other than your attorney, have you talked with
12 anyone about your appearance here today?

13 A My wife.

14 Q And others at the company?

15 A No.

16 Q Okay, now let's talk about some cash, bank and
17 money market accounts at the company.

18 Does Butterfly hold any paper currency
19 or coins, either in U.S. or foreign currency?

20 A I don't know.

21 Q What role do you have with relationship to
22 Butterfly Labs with relation to its money? Do you
23 have signatory authority on any checking accounts?

24 A No.

25 Q Have you ever used a company corporate card a

ROUGH DRAFT

1 credit card?

2 A I have a corporate card.

3 Q And what do you use that for?

4 A Business expenses.

5 Q We'll get back though that in a moment.

6 Do you know of any Butterfly Lab
7 corporate bank account?

8 A I know of some, yes.

9 Q And do you know the banks and the account numbers?

10 A I do not.

11 Q And you said you're a signatory for none of these
12 accounts?

13 A Correct.

14 Q Do you know who is a signatory on the accounts?

15 A I do not.

16 Q Do you know any signatories?

17 A I do not.

18 Q Do you know what the purpose of these accounts is?

19 A I do not.

20 Q Do you know the current status of these accounts?

21 A I do not.

22 Q Do you know the balances of these accounts?

23 A I do not.

24 Q Are you aware of any withdrawals from these
25 accounts?

ROUGH DRAFT

1 A No.

2 Q Have you personally made any withdrawals from
3 these accounts?

4 A No.

5 Q Are you aware of any employees who have made
6 withdrawals for personal expenses?

7 A No.

8 Q Have you heard any information about any employees
9 using corporate accounts for personal
10 expenditures?

11 A No.

12 Q Does Butterfly Labs have any money market
13 accounts?

14 A I don't know.

15 Q And do you have any uncashed checks from Butterfly
16 Labs accounts?

17 A Not to my knowledge.

18 Q Okay, so you have corporate credit cards; correct?

19 A Actually I don't have one currently. I have had
20 one in the past.

21 Q And from when to when did you have it?

22 MR. PERRY: I'm sorry. Can we hold on
23 one second? Someone is knocking at the door.

24 MS. MITHAL: Sure.

25 (OFF-THE-RECORD DISCUSSION.)

ROUGH DRAFT

1 MR. PERRY: Sorry about that, we can
2 move forward.

3 Q (By Ms. Mithal) So from when to when did you have
4 a Butterfly Lab corporate credit account?

5 A I do not recall when I received a card and I have
6 not had a card since approximately a week and a
7 half ago.

8 Q And you understand what circumstances did you not
9 have the card any more?

10 A Apparently someone had used the number
11 fraudulently in California while I was in London
12 and the card was canceled.

13 Q And you said that was last week?

14 A I think the week before.

15 Q The week before. Do you know what that credit
16 card number is?

17 A I do not.

18 Q And who all was the authorized you're on that
19 credit card?

20 A Just myself as far as I know.

21 Q Do you have any more information about the fraud
22 that was on the card?

23 A The only thing I was told that there was several
24 one dollar charges in California from a gas
25 station.

ROUGH DRAFT

1 Q And so that credit card account is closed?

2 A Yes.

3 Q Okay. Was there an outstanding balance on that
4 credit card?

5 A I don't know. I believe so.

6 Q And do you know the amount?

7 A No.

8 Q Are you aware of purchases made using these credit
9 cards?

10 MR. PERRY: I'm sorry?

11 Q (By Ms. Mithal) Or that credit card?

12 MR. PERRY: Thank you.

13 A I'm sorry, could you repeat the question?

14 Q (By Ms. Mithal) Yes, are you aware of purchases
15 that were made using that credit card?

16 A Yes.

17 Q Okay, what purchases are you aware of?

18 A Purchases for food, possibly lodging such as a
19 hotel, possibly airline tickets.

20 Q Are these business travel expenses?

21 A Yes.

22 Q Any other expenses or purchases that you're aware
23 of on the card?

24 A Possibly for electronics or office supplies.

25 Q So only the card was only used for business

ROUGH DRAFT

1 related expenses; is that correct?

2 A Yes.

3 Q And have you personally made purchases using the
4 card?

5 A Can you rephrase the question?

6 Q Have you personally made purchases using the card?

7 A I have made business purchases using the card,
8 yes.

9 Q And are those for the purposes we just discussed?

10 A Yes, they are.

11 Q And are you aware of any employees who have used
12 the card for personal expenses?

13 MR. PERRY: I'm sorry, are you referring
14 to more than one card or are you referring to his
15 corporate credit card?

16 MS. MITHAL: His corporate credit card.
17 Let me rephrase the question.

18 Q (By Ms. Mithal) Are you aware of any employees
19 who have used that card to make personal expenses?

20 A No, I'm not.

21 Q Are you aware of any employees who have used any
22 other corporate credit cards to make personal
23 expenses?

24 A I would not know.

25 Q Have you heard anything about employees using any

ROUGH DRAFT

1 corporate credit cards to make personal expenses?

2 A No.

3 Q Are you aware of a store called Cabella's?

4 A I am.

5 Q What is Cabella's?

6 A It's an outdoor and camping store.

7 Q And what kinds of items do they sell?

8 A Various kinds of items used in camping and hunting
9 and fishing. I'm not sure what else.

10 Q I apologize. Were you finished with your answer?

11 A I am finished, yes.

12 Q Have you ever made a purchase at Cabella's using a
13 Butterfly Labs credit card?

14 A Yes.

15 Q When was that?

16 A I don't recall.

17 Q Do you remember for approximately how much it was?

18 A I do not.

19 Q And do you remember what item was purchased?

20 A For a specific charge?

21 Q Yes.

22 A I could not say without seeing the charge.

23 Q Okay. So let's take out what's been marked as

24 AAJ. The court reporter, I believe, has the

25 exhibits. If you wouldn't mind passing it to the

ROUGH DRAFT

1 witness, please.

2 MR. PERRY: We've got them, thank you.

3 Q (By Ms. Mithal) Mr. Zerlan, can you take a look
4 at this exhibit and turn to the second page at the
5 bottom it says page 3 of 5.

6 A Yes, I see it.

7 Q Towards the bottom of the page it lists the
8 account holder.

9 Do you see the name there?

10 A Yes, I do.

11 Q And can you read that?

12 A Josh Zerlan.

13 Q Yes, and then there's a card number, most of it
14 has been X'd out, but there are four digits at the
15 end, 0364; do you see that?

16 A I do.

17 Q Is this the corporate credit card that you had?

18 A I don't know.

19 Q Okay. Is it possible that you had another
20 corporate credit card?

21 A It's possible.

22 Q Please look at the bottom of the page.

23 Do you see those three charges for
24 Cabella's retail?

25 A Yes.

ROUGH DRAFT

1 Q Okay. Does this refresh your recollection as to
2 purchases made at Cabella's using a corporate
3 card?

4 A I remember purchases at Cabella's, yes.

5 Q Okay, and you can see that it was in October of --
6 I'm sorry, I'm reading the date wrong. I was in
7 April, April 16th and April 15th.

8 Can you see those days all the way over
9 to the left?

10 A Yes, which year does this indicate?

11 Q It's indicates, I'm looking for that, too, hold on
12 one sec. At top of the page it says statement
13 date; do you see that?

14 A Yes.

15 Q Says 2013?

16 A Yes.

17 Q Okay, so do you recall making purchases in April
18 of 2013 at Cabella's?

19 A No, the top of the page indicates a different
20 account number, though, 0315 account number.

21 Q Could it be that there are different numbers for
22 different account holders on the same account?

23 A I wouldn't know.

24 Q Okay, so let's talk more about Cabella's in
25 general. You said that you purchased outdoor and

ROUGH DRAFT

1 camping store equipment there or is that just what
2 it sells? What did you purchase there?

3 A I have purchased firearm, ammunition, food and
4 other miscellaneous camping type gear.

5 Q Okay, and what was the purpose of that?

6 A For office supplies and office protection.

7 Q And could you describe what you -- yeah needed
8 office protection?

9 A Because some of our customers or potential
10 customers are not U.S. citizens and potentially
11 dangerous.

12 Q Dangerous in what way?

13 A Violent or perhaps they would seek to take our
14 equipment or electronics without our consent.

15 Q And how were you made aware of this?

16 (Mr. Eric Johnson enters the deposition
17 at this time.)

18 A I'm sorry, can you rephrase?

19 Q (By Ms. Mithal) Yes, how were you made aware of
20 that customers might be violent?

21 A Because I've received numerous death threats.

22 Q In what regard were those death threats? What
23 were they about, sir?

24 A I hate you. I'm going to kill you. Someone
25 should kill you, that sort of thing.

ROUGH DRAFT

1 Q And did they say why?

2 A Some of them may have said why. I don't recall
3 what that would be.

4 Q How did they come in? How did these complaints
5 come?

6 A No typically via E-mail or private message on
7 forums.

8 Q Are they related to the company?

9 A No, well, some of them are related to the company.
10 Some of them are related to myself personally.

11 Q Okay, and so you purchased guns for yourself, for
12 the office, to keep in the office; is that
13 correct?

14 A No, that is not correct.

15 Q Okay, so could you explain where the guns are now?

16 A There is one pistol at my office in a locked safe
17 and there is one firearm at my house.

18 Q And so these are for your use?

19 A Yes.

20 Q And did you receive authorization from anyone at
21 the company to make these purchases?

22 A I don't recall.

23 Q Did you purchase them using a corporate credit
24 card?

25 A I did.

ROUGH DRAFT

1 Q And Mr. Zerlan, are these guns yours or are they
2 the corporations?

3 A They are the corporations.

4 Q Have you turned them over to the receiver?

5 A The receiver is in possession of one of them, yes.

6 Q Okay, and are you planning to turning the other
7 one over to the receiver?

8 A I will, absolutely.

9 Q Okay. Did anyone direct to you purchase these
10 items?

11 A No.

12 Q Are you aware of anyone else at Butterfly Labs
13 purchasing guns?

14 A I am not.

15 Q Are you aware of a store called OMB Guns?

16 A Yes.

17 Q And what kind of items does that store sell?

18 A Firearms.

19 Q Have you ever made a purchase at that store using
20 a Butterfly Labs credit card?

21 A Yes.

22 Q And when was that?

23 A I don't recall.

24 Q And is this one of the guns that is -- that you
25 just described?

ROUGH DRAFT

1 A There was no firearms purchased from OMB Guns.

2 Q Can you turn to page 8, I think it's the fifth
3 page in your pocket. It says page 3 of 8, I'm
4 sorry about that. If you turn over two pages it
5 says page 3 of 8?

6 A I see it.

7 Q Then you see it says Josh Zerlan in about the
8 middle of the page?

9 A Yes.

10 Q Then the one part under that that's not redacted?

11 A Yes.

12 Q It shows a purchase at OMB Guns for 38.02; is that
13 correct?

14 A Yes.

15 Q And can you describe that purchase?

16 A A monthly fee for using the range.

17 Q Okay. And you paid for that using a corporate
18 account?

19 A Yes.

20 Q And why was that?

21 A To make sure I am safe and able to use the
22 firearm.

23 Q And did anyone at the office direct you to incur
24 those expenses?

25 A No.

ROUGH DRAFT

1 Q And did you seek anyone's permission before doing
2 that?

3 A I did not.

4 Q When you were given the corporate credit card,
5 what were you told its purpose was?

6 A I don't recall.

7 Q Were you told to use it for company expenses only?

8 A I have no recollection of anything being told.

9 Q Okay. And I'm sorry, going back to Cabella's for
10 one second, did you ever purchase any supporting
11 equipment or camping equipment from Cabella's
12 using a company credit card?

13 A Beyond what we've already spoken of?

14 Q It can include what we've already spoken of. Did
15 you say you did purchase from Cabella's camping
16 and outdoor equipment?

17 A Yes.

18 Q And what was that for, for your personal use or
19 for the company?

20 A Office protection.

21 Q Okay.

22 MR. PERRY: Can I clarify something?
23 Are we talking about something purchased other
24 than the firearm? Are you asking the witness if
25 he purchased other equipment, camping or

ROUGH DRAFT

1 otherwise, other than the firearm from Cabella's?

2 MS. MITHAL: Yes, yes, that's correct,
3 thank you.

4 A Not that I recall.

5 Q (By Ms. Mithal) Okay.

6 MR. PERRY: Thank you, sorry about that.

7 MS. MITHAL: No, I appreciate it.

8 Q (By Ms. Mithal) Hang on one sec. Now I would
9 like to ask you some questions about bit coin
10 wallets.

11 Does Butterfly Labs have any bit coin
12 wallet accounts?

13 A Yes.

14 Q How many?

15 A I don't know.

16 Q Do you know of any particular accounts?

17 A Yes.

18 Q How many accounts do you know about?

19 A I believe seven.

20 Q And could you tell me where each of those accounts
21 is located?

22 A That question doesn't make sense.

23 Q Okay. Let me rephrase. Hang on one sec.

24 Mr. Zerlan, can you describe each wallet
25 to me, so, for example, starting with the first

ROUGH DRAFT

1 wallet, how would I or the receiver, for example,
2 access that wallet?

3 MR. PERRY: I think we probably better
4 identify each wallet other than just the first
5 wallet.

6 Do you have a reference number or some
7 way to identify that better so it's clear for the
8 record?

9 Q (By Ms. Mithal) You could just identify them,
10 that would be great, and if there's a particular
11 one you're referring to we could call it the first
12 coin wallet.

13 A We can start with the active wallet.

14 Q Okay.

15 MR. PERRY: Let's call it the active
16 wallet, thank you.

17 A It's the wallet that our payments come into at
18 Butterfly Labs. That particular wallet is stored
19 on a laptop.

20 Q (By Ms. Mithal) And if consumers pay for items
21 using means other than bit coin, would there
22 payments still go into that wallet?

23 A No.

24 Q So this wallet is for consumers who pay in bit
25 coins?

ROUGH DRAFT

1 A Among other things.

2 Q What else would a consumer pay in and then it
3 would end up in that wallet?

4 A Nothing.

5 Q What else has ended up in that wallet?

6 A Mining revenue, other -- various other payments
7 that are not customer related. I'm not sure what
8 else but there probably is other things.

9 Q Okay, so let's start with the mining revenue,
10 could you describe that?

11 A When we burn in our hardware and it earns bit
12 coins it is sent to that wallet.

13 Q And I didn't hear a phrase you said. You said
14 when we something our equipment?

15 A When we burn in our equipment, when we test it to
16 be sure that it's functioning properly.

17 Q And what equipment do you test?

18 A The hardware we manufacture.

19 Q Do you test one piece of each type of hardware?

20 A No, we test each one individually.

21 Q So every bit coin mining machine that Butterfly
22 Labs manufactures you test?

23 A Ideally.

24 Q And that's before it goes to the consumer?

25 A Yes.

ROUGH DRAFT

1 Q Those are machines that are sold to the consumers?

2 A Yes.

3 Q And does the consumer know that the company has
4 mind for bit coins using it?

5 A I wouldn't know.

6 Q Are you aware of any representations on the
7 website or anyone else where that would explain
8 that to consumers?

9 A For which hardware pieces are we talking about?

10 MR. PERRY: Can I just stop you a
11 second. We're getting a little far afield of the
12 limited subjected matter of this deposition
13 pursuant to the Temporary Restraining Order. I'm
14 going to let you go a little bit further and see
15 where this goes, but what it comes down to, the
16 wallets identification and the location of those
17 wallets should be about the limit of your proper
18 testimony. Thank you, though.

19 MS. MITHAL: Okay, and thank you.

20 Q (By Ms. Mithal) And with the wallet you -- I'm
21 sorry, can the court reporter read back my last
22 question?

23 (WHEREUPON, THE PENDING QUESTION WAS
24 READ BY THE REPORTER.)

25 MR. PERRY: I'm actually going to

ROUGH DRAFT

1 instruct the witness not to answer that question
2 as it is outside the scope of the TRO.

3 Q (By Ms. Mithal) So the mining revenue that goes
4 into the active wallet comes from mining bit coins
5 on machines that are going to be sent to
6 consumers; is that correct?

7 A Yes.

8 Q And do you have an approximation of about how much
9 mining revenue goes into the active wallet on a
10 monthly basis?

11 A I would have no idea.

12 Q And you said you have no idea.

13 Do you monitor that wallet at all?

14 A No.

15 Q Do you use that wallet?

16 A No.

17 Q Do you have access to it?

18 A No.

19 Q And you said various other payments --

20 A Yes.

21 Q -- make their way into the wallet. Okay, could
22 you describe those?

23 A I don't know. I just know that some do go in
24 there.

25 Q Do you have any idea of any other kind of

ROUGH DRAFT

1 **payments?**

2 A Not offhand.

3 Q How do you know that other payments go in there?

4 A We discussed it in the past.

5 Q With whom?

6 A With the -- our legal counsel.

7 Q Anyone else?

8 A No.

9 Q And who's we?

10 A The company employees.

11 Q And so the company employees that are aware about
12 these various other payments are who?

13 A I believe Sonny, the only one I know for sure is
14 Sonny.

15 Q Okay, party?

16 MR. PERRY: And sorry, go ahead.

17 Q (By Ms. Mithal) And that's Sonny Vlesiedes? I
18 don't know if I pronounced his name correctly.

19 A Yes.

20 Q Okay, so that was the active wallet. You are
21 aware of several other bit coin wallets.

22 Can you describe the next one?

23 A We have a storage wallet where the funds from the
24 active wallet get swept to on occasion.

25 Q And when does that happen?

ROUGH DRAFT

1 A I have no idea.

2 Q And why does it happen?

3 A So we don't have a vulnerable wallet on the
4 network.

5 Q How do you know that?

6 A Again, when we were discussing it with our
7 counsel.

8 Q And when you say we, that's you and Mr. Vlesiedes?

9 A Yes.

10 Q And the active wallet, going back to that for a
11 second, did you turn that over to the receiver
12 over do you know if it's been turned over to the
13 receiver?

14 A It has.

15 Q And do you know if the second wallet you talked
16 about, the storage wallet, has that been turned
17 over to the receiver?

18 A Yes.

19 Q Do you know how much was in the storage wallet at
20 the time it was turned over to the receiver?

21 A I do not.

22 Q And do you know roughly how much has been in the
23 storage wallet on a monthly basis?

24 A No.

25 Q Do you know how much has been in it at any time?

ROUGH DRAFT

1 A No.

2 Q And the same question with the active wallet, do
3 you know how much has been in it on a monthly
4 basis?

5 A No.

6 Q At any time?

7 A No.

8 Q Now, let's describe the next wallet.

9 Can you do that, Mr. Zerlan?

10 A Yes, I have an expense wallet.

11 Q And can you describe that wallet?

12 A It's a wallet I use for business expenses.

13 Q What type of business expenses?

14 A Primarily anything that can be purchased with bit
15 coin that's office related. I can't think of a
16 specific example. I haven't used it in a very
17 long time.

18 Q When was the last time you used it?

19 A I don't know.

20 Q Do you know how much was in that wallet the last
21 time you used it?

22 A Between 11 and 14 bit coins.

23 Q And why haven't you used it since the last time
24 you used it?

25 A I've had no expenses.

ROUGH DRAFT

1 Q Has that been turned over to the receiver?

2 A It is in the possession of the receiver, yes.

3 Q And so you have access to these storage wallet
4 also?

5 A No.

6 Q And do you have access to the active wallet?

7 A No.

8 Q Who all has access to the active wallet?

9 A At this time only the receiver.

10 Q And prior to that?

11 A Sonny. I believe Jeff Ownby may have had access
12 to it but I don't know.

13 Q And what about the storage wallet, who all has
14 access to that?

15 A I don't know.

16 Q Do you know anyone who had access to it prior to
17 the receiver?

18 A Sonny.

19 Q And let's move on to the next wallet.

20 A I have an advertising wallet that I pay for
21 advertising from.

22 Q And that's business advertising, Mr. Zerlan?

23 A Yes.

24 Q And is that wallet active or was it until it was
25 turned over to the receiver?

ROUGH DRAFT

1 A Again, I haven't used it in quite a long time.

2 Q The last time that you used it do you know how
3 much was in it?

4 A Again, between 11 and 14 bit coins.

5 Q And who else had access to that wallet?

6 A Just me.

7 Q And how was that wallet funded?

8 A I don't know. I requested it to be replenished
9 fit got low and Sonny sent it, I presume, from the
10 active wallet.

11 Q And how was the expense wallet funded?

12 A Same way.

13 Q Okay. Who had access to the expense wallet?

14 A Just me.

15 Q And who had access to the advertising wallet?

16 A Just me.

17 Q And now who has access to them besides the
18 receiver. I'm sorry. I'm going to rephrase.
19 Prior to the receiver who also had access to those
20 wallets, anyone?

21 A No one.

22 Q Can you describe the next wallet?

23 A We have the EMC hot wallet.

24 Q Okay, and what's in that wallet?

25 A The funds owed to users of the EMC website.